

BOARD OF APPEALS CASE NO. 5366	*	BEFORE THE
APPLICANT: Lawrence & Beth Shepard	*	ZONING HEARING EXAMINER
REQUEST: Variance to locate an addition within the required rear yard setback; 307 Avedon Court, Joppa	*	OF HARFORD COUNTY
	*	
	*	Hearing Advertised
HEARING DATE: August 20, 2003	*	Aegis: 7/18/03 & 7/23/03
	*	Record: 7/18/03 & 7/25/03

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Lawrence and Beth Shepard, are requesting a variance, pursuant to Ordinance 6, Section 10.5, of Harford County, to construct an addition within the required 40 foot rear yard setback (proposed 33 feet) in an R3/CDP District.

The subject property is located at 307 Avedon Court, Joppa, Maryland 21085, in the First Election District, and is more particularly identified on Tax Map 69, Grid 2C, Parcel 164, Lot 13. The parcel contains 0.22 acres, more or less.

The Applicant, Lawrence T. Shepard, appeared and testified that he is the owner of the subject property. He stated that he had read the Department of Planning and Zoning's Staff Report, and that he had no changes or corrections to that information contained therein. According to the witness, he and his family have lived at the subject location for 16 years. He indicated that the existing family room is too small, and that the requested addition will provide more space for his family. He also testified that the proposed addition is designed to be compatible with, and to and blend in with the existing dwelling.

The Applicant indicated that his home was originally constructed 12 feet 8 inches behind the 25-foot front setback line, causing it to extend further into the rear yard than other homes in his neighborhood. He further stated that the rear of his property backs to an area of densely wooded open space, owned by the neighborhood homeowners association. There are no residences located directly behind the subject property.

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Mr. Shepard next testified that his homeowner's association had reviewed, and approved, the plans for the proposed addition. The subject parcel is improved by two-story dwelling, an attached two car garage, and a blacktop driveway. A new porch is currently under construction in front of the existing home. In the subject case, the Applicants are requesting a variance to build a 20 by 33 foot addition onto to the rear of their home. The addition would encroach 7 feet into the required 40 foot rear yard setback.

Mr. Shepard introduced a blueprint of the existing dwelling and proposed addition, as Applicant's Exhibit 1. According to the witness, the top left corner on the first page of that exhibit, contains a drawing of the existing home, and the top right corner contains a drawing of the proposed addition. The middle right portion of the page depicts the existing site plan, with the proposed addition sketched in. The witness next introduced a series of three photographs of the front of his home, designated as Applicant's Exhibit 2. Mr. Shepard testified that, as shown in those photographs, the left side of the house was constructed 13 feet 11 inches behind the required 25 foot front setback. Applicants' Exhibit 3 contains a series of four photographs showing the portion of his left rear yard where the proposed addition would be built. The witness indicated that after construction of the requested addition, the remaining rear yard would still be 31 feet 4 inches in length. The photographs contained in Applicant's Exhibit 3 also show the vacant area of open space behind the subject property. Applicant's Exhibit 4, is a second series of four photographs showing the rear yard of the subject parcel. The top photograph shows an addition on the rear of the adjoining property located at 309 Avedon Court. This addition extends 15 feet past the rear of the Applicants' home.

Mr. Shepard testified that his home is located in Joppatown, within the Foster Branch neighborhood, and that lines between neighborhoods in that area are indistinct. According to the witness there are four homes on Foster Knoll with additions larger than the one which he is proposing. One of those additions is actually 33 by 57 feet in size, and houses a 20 by 40 foot indoor swimming pool. According to the witness, the granting of the requested variance will not have any adverse impact on neighboring properties, because it will be compatible with both the existing dwelling, and other homes in the neighborhood.

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He testified that the adjacent homeowner located at 309 Avedon Court will notice that the existing dwelling extends 20 feet further toward the rear property line, however, the distance between the two houses will remain the same. He further stated that although that adjoining dwelling was constructed 10 feet closer to the front setback than the Applicants' home, it currently extends 15 feet past the rear of his dwelling and two feet into the rear setback. This is because of an 11-foot rear addition constructed on that home. Finally, Mr. Shepard stated that his neighborhood is located within a new development, under construction within the Chesapeake Bay Critical Area. However, his home is on the very outskirts of the line designating the critical area.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Department recommended approval of the subject request in its July 21, 2003 Staff Report. He also indicated that the Department found the subject property to be unique, because the home was constructed well behind the required 25-foot front yard setback. If the house had been built closer to the front setback, no variance would be needed to construct the proposed addition.

Mr. McClune testified that the granting of the proposed variance would not result in any adverse impact to adjoining properties because it is consistent with other additions found within the community. He further stated that the requested addition will not be visible from the rear of Applicants' property because the lot backs to a wooded area recorded as open space. In conclusion, Mr. McClune indicated that the subject area was developed pursuant to R3 Community Development Standards, and stated that the Applicant has not requested a variance to any Chesapeake Bay Critical Area.

No witness appeared in opposition to the requested variance.

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CONCLUSION

The Applicants, Lawrence and Beth Shepard, are requesting a variance, pursuant to Ordinance 6, Section 10.5, of Harford County, to construct an addition within the required 40 foot rear yard setback (proposed 33 feet) in an R3/CDP District. Ordinance 6, Section 10.5 requires a minimum 40 foot rear yard depth in an R3/CDP District.

Section 267-11 of the Harford County Code permits the granting of variances, stating:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. "A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties." *Cromwell, supra*, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. This requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

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The Hearing Examiner finds that the subject property is unique. The home is constructed between 12 feet 8 inches, and 13 feet 11 inches, behind the front yard setback. The placement of the home on the subject property leaves insufficient room for constructing an addition to the rear of the Applicants' house. If the existing dwelling had been built closer to the front setback, the Applicants would not need a variance in order to construct the proposed addition. Thus, the first prong of the Cromwell test has been met.

It must next be determined whether denial of the requested variance would create an unusual hardship or practical difficulty for the Applicant. The Hearing Officer finds that literal enforcement of the Code would result in practical difficulty in this case because the placement of the existing dwelling on the subject property precludes the construction of a rear addition similar to others found within the Applicants' neighborhood without the necessity of first obtaining a variance. If the requested variance is not granted, the Applicants will be denied property rights commonly enjoyed by other homeowners in the Foster Branch neighborhood.

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of the Code or the public interest. There are other homes in Applicant's neighborhood with similar rear additions. Furthermore, the proposed addition has been designed to be compatible with both the existing dwelling, and with other properties in the Foster Branch subdivision.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

Date **SEPTEMBER 22, 2003**

Rebecca A. Bryant
Zoning Hearing Examiner